



Virginia
Regulatory
Town Hall

townhall.state.va.us

Proposed Regulation Agency Background Document

Agency name	Department of Health Professions
Virginia Administrative Code (VAC) citation	18 VAC 76-40
Regulation title	Regulations Governing Emergency Contact Information
Action title	Initial regulations
Document preparation date	9/26/03

This information is required for executive review (www.townhall.state.va.us/dpbpages/apaintro.htm#execreview) and the Virginia Registrar of Regulations (legis.state.va.us/codecomm/register/regindex.htm), pursuant to the Virginia Administrative Process Act (www.townhall.state.va.us/dpbpages/dpb_apa.htm), Executive Orders 21 (2002) and 58 (1999) (www.governor.state.va.us/Press_Policy/Executive_Orders/EOHome.html), and the *Virginia Register Form, Style and Procedure Manual* (http://legis.state.va.us/codecomm/register/download/styl8_95.rtf).

Brief summary

In a short paragraph, please summarize all substantive changes that are being proposed in this regulatory action.

Chapter 602 of the 2003 Acts of the Assembly requires the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, to adopt regulations for the collection of emergency contact information to be used to notify health professionals in the event of a public health emergency. Regulations identify those licensed, certified or registered persons to which the requirement to report shall apply, the information to be reported and the procedures and time limits for reporting.

Basis

Please identify the state and/or federal source of legal authority to promulgate this proposed regulation, including (1) the most relevant law and/or regulation, including Code of Virginia citation and General Assembly bill and chapter numbers, if applicable, and (2) promulgating entity, i.e., the agency, board, or person. Describe the legal authority and the extent to which the authority is mandatory or discretionary.

The legislative mandate for promulgation of 18 VAC 76-40-10 is found in Chapter 602 of the 2003 Acts of the Assembly:

CHAPTER 602

An Act to amend and reenact § 54.1-2506.1 of the Code of Virginia, relating to health practitioner contact information for a public health emergency; emergency.

[H 2182]

Approved March 18, 2003

Be it enacted by the General Assembly of Virginia:

1. That § [54.1-2506.1](#) of the Code of Virginia is amended and reenacted as follows:

§ [54.1-2506.1](#). Submission of required information.

A. The Department is authorized to require individuals applying for initial licensure and individuals who are licensed to practice medicine, osteopathic medicine, dentistry, or to practice as a physician assistant, nurse practitioner or dental hygienist, to provide information in addition to that which is required to determine the individual's qualifications to be licensed. Such additional information shall identify the individual's specialty and subspecialty; credentials and certifications issued by professional associations, institutions and boards; and locations of practice and number of hours spent practicing at each practice location. Such information shall be collected and maintained by the Department for manpower planning purposes in cooperation with agencies and institutions of the Commonwealth and shall be released by the Department only in the aggregate without reference to any licensee's name or other individual identifying particulars. Prior to collecting any information described in this section from individual licensees, the Department shall first attempt to obtain from other sources information sufficient for manpower planning purposes.

B. *For the purpose of expediting the dissemination of information about a public health emergency, the Department is authorized to require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency. Such email addresses, telephone numbers and facsimile numbers shall not be published, released or made available for any other purpose. The Director, in consultation with the Department of Health and the Department of Emergency Management, shall adopt regulations that identify those licensed, certified or registered persons to which the requirement to report shall apply and the procedures for reporting.*

2. That the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.

3. That an emergency exists and this act is in force from its passage.

Purpose

Please explain the need for the new or amended regulation by (1) detailing the specific reasons why this regulatory action is essential to protect the health, safety, or welfare of citizens, and (2) discussing the goals of the proposal and the problems the proposal is intended to solve.

The purpose of these regulations is to set out the listing of licensees, certificate holders, and registrants that are required to provide contact numbers and email addresses which may be used in the event of a public health emergency to disseminate information to health care providers and to request mobilization of those providers needed to deliver services in an affected area of the state. Phone numbers, fax numbers and email addresses will be collected from those who list Virginia as their address of record, as well as those from contiguous states and the District of Columbia. The Department of Health Professions must collect the data which is maintained in a web-based system and available for use by the Department of Health in the event of a public health emergency. In such an event, expedited notification to health care professionals giving them vital instruction and information could be crucial to public health and safety. Also, the Emergency Contact Information system may be activated in order to mobilize a volunteer workforce of health professionals who could report to an affected area of the state.

Substance

Please briefly identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. (More detail about these changes is requested in the "Detail of changes" section.)

Proposed regulations list those categories of regulated entities that will be required to provide emergency contact information and limits that requirement to those persons or entities whose address of record is in Virginia, a contiguous state or the District of Columbia. The contact information required to be reported is set forth in regulation, along with the time frame within the regulant is expected to respond. Regulated entities are only required to provide fax numbers or email addresses if they have direct access to such, and all collected information may be only used for the purpose of disseminating notification of a public health emergency. After the initial data collection, the regulants will be asked to update their information on a renewal application and whenever there is a change in the contact information provided to the Department.

Issues

Please identify the issues associated with the proposed regulatory action, including:

- 1) the primary advantages and disadvantages to the public, such as individual private citizens or businesses, of implementing the new or amended provisions;*
- 2) the primary advantages and disadvantages to the agency or the Commonwealth; and*
- 3) other pertinent matters of interest to the regulated community, government officials, and the public.*

If the regulatory action poses no disadvantages to the public or the Commonwealth, please so indicate.

1) The primary advantage to the public of implementing these provisions is the ability to have a notification system in place in the event of a public health emergency. By being able to provide immediate, reliable information to health care workers, a vital, appropriate response to an emergency may be expedited. There are no disadvantages to the public or to licensees.

Emergency contact information is not subject to the Freedom of Information Act, so private numbers and email addresses are protected.

2) The advantage to the Commonwealth is the facilitation of emergency management planning. With a database of emergency contact numbers, response time to a public health emergency should be greatly reduced and much more effective. There are no disadvantages; the Department of Health has secured a federal grant from which the initial cost of creating the database and collecting the information is to be paid.

3) There is no other pertinent information regarding this regulatory action.

Economic impact

Please identify the anticipated economic impact of the proposed regulation.

<p>Projected cost to the state to implement and enforce the proposed regulation, including (a) fund source / fund detail, and (b) a delineation of one-time versus on-going expenditures</p>	<p>Projected cost by 12/31/03 to implement collection of emergency contact information from approximately 144,000 practitioners under HB 2182 is \$ 201,901 to include printing, supplies, mailings, staff time and equipment upgrades. The Department of Health has secured a federal grant for bioterrorism response from which the Department of Health Professions is to be reimbursed under a memorandum of understanding. After the grant period, on-going data collection will occur in conjunction with applications and renewals, the expense of which is likely to be borne by DHP supported by the fees of its licensees. It is not intended that failure to provide emergency contact information would become grounds for disciplinary action, so there should be no additional costs associated with enforcement.</p>																						
<p>Projected cost of the regulation on localities</p>	<p>None</p>																						
<p>Description of the individuals, businesses or other entities likely to be affected by the regulation</p>	<p>The individuals likely to be affected include all those listed in section 10 of the regulation. Of the total number of licensees or certificate holders, only those with Virginia addresses or who live in contiguous states will be affected.</p>																						
<p>Agency’s best estimate of the number of such entities that will be affected – includes licensees and certificate holders in each category who have a VA, DC, KY, MD, NC TN or WV address of record.</p>	<table border="0"> <tr><td>Certified massage therapists</td><td style="text-align: right;">3,165</td></tr> <tr><td>Clinical psychologists</td><td style="text-align: right;">1,914</td></tr> <tr><td>Clinical social workers</td><td style="text-align: right;">3,848</td></tr> <tr><td>Dentists</td><td style="text-align: right;">4,627</td></tr> <tr><td>Funeral service licensees, embalmers and funeral directors</td><td style="text-align: right;">1,520</td></tr> <tr><td>Licensed acupuncturists</td><td style="text-align: right;">184</td></tr> <tr><td>Licensed practical nurses</td><td style="text-align: right;">26,252</td></tr> <tr><td>Licensed professional counselors</td><td style="text-align: right;">2,431</td></tr> <tr><td>Medical equipment suppliers</td><td style="text-align: right;">256</td></tr> <tr><td>Pharmacy technicians</td><td style="text-align: right;">1,151</td></tr> <tr><td>Pharmacists</td><td style="text-align: right;">7,097</td></tr> </table>	Certified massage therapists	3,165	Clinical psychologists	1,914	Clinical social workers	3,848	Dentists	4,627	Funeral service licensees, embalmers and funeral directors	1,520	Licensed acupuncturists	184	Licensed practical nurses	26,252	Licensed professional counselors	2,431	Medical equipment suppliers	256	Pharmacy technicians	1,151	Pharmacists	7,097
Certified massage therapists	3,165																						
Clinical psychologists	1,914																						
Clinical social workers	3,848																						
Dentists	4,627																						
Funeral service licensees, embalmers and funeral directors	1,520																						
Licensed acupuncturists	184																						
Licensed practical nurses	26,252																						
Licensed professional counselors	2,431																						
Medical equipment suppliers	256																						
Pharmacy technicians	1,151																						
Pharmacists	7,097																						

	Physical therapists 3,927 Physician assistants 879 Radiologic technologists 2,323 Registered nurses 77,629 Respiratory care practitioners 2,851 Surface transportation and removal service registrants 43 Veterinarians 2,577 Wholesaler distributors of pharmaceuticals 172
Projected cost of the regulation for affected individuals, businesses, or other entities	There is no projected cost to the regulated entities who provide information on-line. A pin number is provided to enable the practitioner to provide numbers on a secure website. If a person does not have internet access, he is sent a paper copy of the form and asked to return the form, which would entail the cost of an envelope and a stamp.

Alternatives

Please describe any viable alternatives to the proposal considered and the rationale used by the agency to select the least burdensome or intrusive alternative that meets the essential purpose of the action.

House Bill 2182 of the 2003 General Assembly authorized the Department to “require certain licensed, certified or registered persons to report any email address, telephone number and facsimile number that may be used to contact such person in the event of a public health emergency.”

Further, the General Assembly included an enactment clause to mandate the promulgation of emergency regulations. The second enactment clause in Chapter 602 of the 2003 Acts of the Assembly requires, “That the Director of the Department of Health Professions, in consultation with the Department of Health and the Department of Emergency Management, shall promulgate regulations to implement the provisions of this act to be effective within 280 days of its enactment.”

There are no viable alternatives to the promulgation of a permanent regulation for the collection of emergency contact information to replace the emergency regulations by the expiration date of August 5, 2004.

There are no alternatives to the promulgation of regulations, which is specifically mandated by Chapter 602 of the 2003 Acts of the Assembly. The regulations provide the basic framework for the data collection, namely the listing of regulated entities from which information is to be collected, the specific numbers and addresses that will be requested, and a time frame for compilation.

Implementation of the DHP-VDH online system for collecting health care practitioner emergency contact information has been set out in a Memorandum of Understanding (MOU) between the Department of Health and the Department of Health Professions. It calls for certain classifications of health care practitioners to provide emergency contact information on a voluntary basis. Though practitioners will be given a specific time frame within which to

respond, the Department does not anticipate initiating an enforcement proceeding against practitioners who fail to respond at this time. In addition, no one will be denied licensure renewal for failure to comply. Emergency contact data will be combined with licensure information already maintained in a data system within DHP, so VDH will have access to the practitioner's full name, occupation, licensing board, licensure status, license number, and zip code in addition to phone numbers, fax numbers and email addresses. The practitioner will also be asked whether he would be willing to volunteer for medical response during a bioterrorism event or any other public health emergency and may be asked to voluntarily provide a digital pager number. Data collection will initially be conducted on-line with opportunity given after the first 30 days for practitioners to respond to a paper survey.

Persons involved in emergency preparedness at VDH and the Department of Emergency Management have provided the categories of regulants from which information is needed. Also, a decision has been made to prioritize that listing to ensure that health care practitioners who are considered more critical to care for the public in an emergency are solicited for information first. Since doctors of medicine, osteopathy and podiatry have already provided such information in a data base through a previous legislative mandate, the next group would include nurses (RN and LPN), physician assistants, certain licensed mental health professionals, veterinarians, pharmacists, dentists and so forth.

Public comment

Please summarize all comments received during public comment period following the publication of the NOIRA, and provide the agency response.

A Notice of Intended Regulatory Action was published in the Register of Regulations and posted on the Townhall on August 25, 2003. There was one comment on the emergency regulation from the Executive Director of the Board of Pharmacy recommending that pharmacies be deleted from the emergency contact list and pharmacy technicians be added.

Family impact

Please assess the impact of the proposed regulatory action on the institution of the family and family stability.

There is no impact of the proposed regulatory action on the institution of the family and family stability. In the event of a public health emergency, it would be expected that the ready availability of contact numbers to disseminate information and mobilize a response by health care workers and entities could have a positive effect of the stability and viability of many families in the Commonwealth.

Detail of changes

Please detail all changes that are being proposed and the consequences of the proposed changes. Detail all new provisions and/or all changes to existing sections.

If the proposed regulation is intended to replace an emergency regulation, please list separately (1) all changes between the pre-emergency regulation and the proposed regulation, and (2) only changes made since the publication of the emergency regulation.

For changes to existing regulations, use this chart:

Current section number	Proposed new section number, if applicable	Current requirement	Proposed change and rationale
n/a	10	n/a	<p>Section 10 delineates which of the regulated entities under the Department are required to report to include persons whose address of record is in Virginia or in the District of Columbia or a contiguous state. For the purpose of disseminating emergency information and mobilizing a response, it was not necessary to obtain contact numbers and addresses on regulants whose residency is in states beyond the borders of Virginia.</p> <p>The alphabetical listing of licensees or certificate holders required to report was derived from the priority list set by the Departments of Health and Emergency Management based on the types of professionals that may need to be contacted in a public health emergency or may be requested to volunteer their services. Contact information is currently collected and available on doctors of medicine, osteopathy and podiatry, so they are not included.</p> <p>Change from the emergency regulation:</p> <p>Instead of pharmacies, the proposed regulation would collect emergency contact information from pharmacy technicians. Emergency contact information is already being collected from all pharmacists, including the pharmacist-in-charge of each pharmacy location, so the information is redundant. Programming would have to be altered to accommodate collection of information relevant to a facility rather than a person. Pharmacy technicians are added because they are trained in repackaging and could be utilized to break down the CDC national stockpile in the event of a bioterrorism event.</p>
n/a	20	n/a	<p>Section 20 delineates the information that is to be collected upon request from the Department, including telephone numbers for the workdays and during non-business hours, a fax number and an email address. If the person does not have direct access to fax or email, he is not required to report that information. Subsection C restates the statutory provision that the information collected cannot be disseminated for any purpose other than to be provided to the Department of Health in a public health emergency.</p>

n/a	30	n/a	Section 30 requires that the time limit for reporting be set by the Director and that it be no less than 30 days or more than 90 days from receipt of the notification from the Department. This section also provides that whenever there is a change in the information given, it should be provided to the Department within 30 days.
-----	----	-----	--